

Dated: April 29, 2019

The following is ORDERED:





**TOM R. CORNISH
UNITED STATES BANKRUPTCY JUDGE**

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF OKLAHOMA**

IN RE:

RONALD EDWARD MARUSAK,
Debtor.

Case No. 18-81208-TRC
Chapter 13

LSF8 MASTER PARTICIPATION TRUST,
Plaintiff,

v.

Adv. No. 19-8001-TRC

RONALD E. MARUSAK.

Defendant.

**ORDER DETERMINING PROCEEDING TO BE NON-CORE AND
REPORT AND RECOMMENDATION TO DISTRICT COURT
REGARDING UNOPPOSED MOTION TO WITHDRAW THE REFERENCE**

On January 24, 2019, Debtor Ronald Edward Marusak filed a Notice of Removal to Bankruptcy Court of Case No. CJ-2014-134, from the District Court of Carter County, Oklahoma (Docket Entry 1). He states in this Notice that he does not consent to the entry of final orders by this bankruptcy court as required by Fed. R. Bankr. P. 9027(a)(1). He also states that he has a related action pending in the United States District Court, Eastern District of Oklahoma, under 42

U.S.C. § 1983. Service of the Notice of Removal was made on an attorney who was not authorized to represent LSF8 Master Participation Trust (*see Amicus Curiae Notice to Court of Relevant Facts*, Docket Entry 23).

On February 14, 2019, Marusak filed a Motion to Withdraw the Reference pursuant to Fed. R. Bankr. P. 5011 (Docket Entry 12). He does not state whether the proceeding is a core proceeding under 28 U.S.C. 157(b) or a proceeding that is otherwise related to a case under Title 11, as required by District Court LCvR 84.1(b)(1).

Eventually, proper notice of Marusak's Notice of Removal and Motion to Withdraw the Reference was given to LSF8 Master Participation Trust. LSF8 filed its Statement Regarding Removal (Docket Entry 30) in which it denies the allegations contained in the Notice of Removal and states that it does not consent to the entry of final orders or judgment by this bankruptcy court.

Pursuant to District Court LCvR 84.1 (b)(4), this court finds that the claims raised in the removed case involve non-core proceedings that may be otherwise related to a case under title 11, primarily arising under state law. Based upon this court's review of the Amended Petition and Answer in the Carter County District Court case Marusak has attached to his Notice of Removal, the only issues in the removed case involve state foreclosure law, and do not depend on bankruptcy law for their existence; thus, it is not a core proceeding. *See Gardner v. U.S. (In re Gardner)*, 913 F.2d 1515 (10th Cir. 1990). Marusak's Notice of Removal and Motion to Withdraw the Reference include additional allegations of wrongful foreclosure and violations of "Federal Constitutional Law," and requests to vacate state court orders, rescission and reformation of a mortgage. Neither party consents to the entry of final orders or judgment of this bankruptcy court.

This court believes that judicial economy will be served if the reference is withdrawn and all matters involving this case as well as the companion case currently pending in this District Court are resolved by the District Court. Therefore, pursuant to 28 U.S.C. § 157(d), District Court

LCvR 84.1 and Bankruptcy Court Local Rule 5011-1, this court respectfully recommends to the District Court that the unopposed motion to withdraw the reference be granted.

This court notes that no motion for relief from the automatic stay has been filed regarding continuation of the claims set forth in the state court action Marusak seeks to remove and submit to the District Court. *See* 11 U.S.C. §362(a); *In re Cashco, Inc.*, — B.R.—, 2019 WL 1495095 (Bankr. D. N.M., March 25, 2019).

IT IS THEREFORE ORDERED and determined pursuant to District Court LCvR 84.1(b)(4) that the removed case is not a core proceeding under title 11.

IT IS FURTHER ORDERED that the Clerk of the Bankruptcy Court shall transmit a copy of this order and recommendation to the Clerk of the United States District Court for the Eastern District of Oklahoma, together with a copy of the record of this case and shall file a certificate of such transmission in this proceeding.

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